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Good day Senator DeFronzo and Representative Guerrera and other members of the Transportation Committee. My name is Andrew Schneider and I am Executive Director for the American Civil Liberties Union of Connecticut. I am here before you today to express our support for proposed Senate Bill No. 436, An Act Prohibiting The State of Connecticut From Complying With The Federal Real ID Act of 2005.

The American Civil Liberties Union's opposition to the Real ID Act is well known. We have spent considerable time studying the provisions of the Act and its implications for the constitutional rights of all Americans. Through our advocacy at the state and federal levels, and through our website ([www.Realnightmare.org](http://www.Realnightmare.org)), we have made lawmakers and the public aware of the substantial burdens that the Real ID Act imposes on states and their citizens. These burdens come in the form of: enormous costs that are inadequately funded by the federal government (which makes this is a huge unfunded mandate for Connecticut); massive invasion of everyone's privacy; and the potential for "Kafkaesque" encounters with the excesses of bureaucratic government.

Because the ACLU's general position is so well known, I will focus my testimony on the finalized Department of Homeland Security (hereafter "the Department") regulations and their significant shortcoming when it comes to the states. I will also talk about the relevant portions of the most recent budget submitted by the Bush Administration that demonstrate the continuing failure on the part of the federal government to sufficiently fund the implementation of the Real ID Act. Finally, I will discuss a couple of the constitutional issues.

On January 11, 2008, the Department of Homeland Security issued its final regulations for implementing the Real ID Act. The Department had published proposed regulations in March of 2007, which generated more than 21,000 public comments covering a range of concerns. Unfortunately, the final regulations fail to address the majority of those concerns.

### **Cost of Implementing Real ID**

The regulations fail to address how states will pay for the steps needed to come into compliance with Real ID. The regulations acknowledge that compliance "carries with it significant cost and logistical burdens, for which Federal funds are generally not available." The Department estimates it will cost at least \$9.9 billion to pay for Real ID. This is a revision of their earlier cost estimate of \$23.1 billion; our analysis indicates the Department has relied on fuzzy math and questionable assumptions to reach that reduced figure. For example, although the Department anticipates that a Real ID requirement will become widespread throughout American society, they reduce the estimated cost by claiming that 25% of the country's drivers will never bother getting a Real ID because they already have passports. In this and other ways, the Department has fudged the

numbers in order to bring down its cost estimate. It is important to note, however, that to date, Congress has appropriated less than 1% of even the Department's reduced estimate.

### **Information Technology Overhauls**

Another significant problem is the impact that Real ID will have on states' information technology systems. The Act requires sweeping changes to state driver's licenses and the systems by which those licenses are administered. It imposes a requirement for uniform data elements on state licenses. It also imposes a requirement of information sharing among states' databases - while providing no guidance whatsoever on how data sharing is supposed to be implemented. Leaving this critical question unanswered is another way the Department has attempted to drive down the cost.

What is unfortunately clear is that the states will be forced to make expensive changes to their information technology systems and in some cases states will find themselves discarding many of the recent improvements they have made.

### **Privacy**

Because we do not know what the infrastructure of the data sharing will look like, there is no way to know how the privacy of the people of Connecticut's personal information will be safeguarded. The Department has been petitioned repeatedly by groups like the ACLU, Privacy Rights Clearinghouse and the Association of Computing Machinery to create some sort of standard for protecting the data that will be stored in the massive interlinked database that will be created under Real ID. On this question, the Department has punted over and over again. The final regulations contain no national security plan for Americans' personal information; instead they hypothesize that the states will figure it out. Further, the Department contemplates that the American

Association of Motor Vehicle Administrators will operate the database. This private association has no accountability to Connecticut or to the American public. It is not bound by either the Privacy Act, which applies to federal agencies, or the Drivers' Privacy Protection Act, which applies to state DMVs. From a privacy standpoint, this dodge on the part of the Department is unacceptable.

### **Reenrollment**

Under the final regulations, the Connecticut Department of Motor Vehicles, like other DMVs across the country, will have to reprocess existing licensees. The regulations acknowledge that all applicants will need to complete "an application process similar to those of a first time driver." This means that the Connecticut Department of Motor Vehicles will have to revamp how applications for new licenses and renewals are handled. Many of Real ID's mandates (such as presenting source documents, verifying identity and taking a digital photo) will require an in-person application. The people of Connecticut will not be able to take advantage of the recent progress made by the Connecticut Department of Motor Vehicles that allows them to renew via the Internet or mail. The Connecticut Department of Motor Vehicles' offices will be swamped by its customers and there will be long lines. And you will have angry constituents.

The Connecticut Department of Motor Vehicles' offices could also be overwhelmed by the need to develop and maintain significant new document storage and retention capacity. This will require additional staff, new equipment and computer software, and the remodeling and redesigning of numerous offices. The regulations will also require extensive new training in detection of fraudulent documents. The

Department's regulations impose on states the increased cost and burden of this training without providing any funding to pay for it.

### **Federal Funding**

Implementation of Real ID is going to cost a significant amount of money. And that is one area where the federal government demonstrates its true lack of interest in helping the states and its willingness to pass on this unfunded mandate. The President's FY 2009 budget was its last chance to get the funding portion of Real ID right. Instead of asking Congress for the \$1 billion in startup funds that the National Conference of State Legislatures and National Governors Association have repeatedly stated are absolutely necessary, the budget contains only \$110 million, to be split between Real ID and other Homeland Security programs. The message is clear: the Bush Administration may want to convey the impression it supports Real ID, but does not actually want to pay for it.

Currently, Connecticut is dealing with a crippling budget crisis, and is in no position to accept financial responsibility for a massive unfunded mandate. Our state should not be forced to choose between cutting vital programs and instituting substantial tax increases or raising license fees to implement a program that has a dubious security benefit at best.

### **Constitutional Problems with the Act**

The Real ID Act burdens Americans' right to travel, which has been recognized by the U.S. Supreme Court to derive from the First Amendment. In addition, because a Real ID will be required to enter a federal building, including a courthouse, there are significant implications for due process, the right to trial before a jury of one's peers, and the right to petition government officials. Instead of responding to these concerns, the

Department essentially threw its hands in the air, simply *disagreeing* in its final regulations that these requirements posed problems for the constitutional rights of Americans, or saying that those problems were a result of the statute itself and the Department was unable to mitigate them.

### **Conclusion**

This is just a brief review of our concerns about the Real ID Act. More information on the ACLU's position on the Act and the regulations can be found at [www.Realnightmare.org](http://www.Realnightmare.org).

We do not believe that the Real ID Act can really be fixed. A national ID card is inherently problematic for all the reasons I have laid out. That is why eleven states – Georgia, Maine, Montana, New Hampshire, Oklahoma, South Carolina, Washington, Alaska, Arizona, Idaho, and Louisiana – have enacted statutes opting out of the program. Nine additional states responded to the release of the final regulations by introducing legislation to opt out or demand that Congress repeal the law. We support proposed Senate Bill 436, which would allow Connecticut to opt out of Real ID as well. On the national level we support an alternative to Real ID, the Identity Security Enhancement Act. This bill addresses many of the problems I have discussed. It would repeal Title II of the Real ID Act of 2005 and restore a negotiated rulemaking process set up by the Intelligence Reform and Terrorism Prevention Act of 2004. That negotiated rulemaking process was well on its way to developing a secure ID plan and would have been completed long ago if not for Real ID. We know this because the ACLU was a member of that committee, along with licensing experts, state police and the Department of Homeland Security. We support a secure ID so long as it takes Americans' privacy and

civil liberties into account, and a new negotiated rulemaking process could develop a plan for enhancing ID security faster than it will take to implement Real ID, while respecting states' traditional role in determining licensing rules and protecting Americans' privacy. That is why the Identity Security Enhancement Act is the pro-security *and* pro-civil liberties alternative to Real ID, and why it enjoys bipartisan support in the Senate, as well as the endorsement of the Association of Corporate Travel Executives – hardly a civil liberties group, but an association that recognizes that Real ID will hurt business by making travel in America an impossible hassle.

Real ID is indeed a real nightmare, but it is one from which we can still wake up. Thank you and I will be happy to try to answer any questions you may have.